

OCT 05 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LETICIA MEDINA DE GALLO,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General

Respondent.

No. 05-72207

Agency No. A075-521-520

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 14, 2009^{**}

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Leticia Medina De Gallo, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision finding her inadmissible under 8 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1182(a)(6)(E)(i), and ineligible for relief from removal, as an alien involved in alien smuggling. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo questions of law. *Altamirano v. Gonzales*, 427 F.3d 586, 591 (9th Cir. 2005). We grant the petition for review and remand.

When considering Medina De Gallo's appeal, the BIA did not have the benefit of our decision in *Altamirano*, which held that a petitioner's presence in a vehicle crossing the United States border, despite knowledge of a smuggling scheme, does not constitute alien smuggling. *Id.* at 588-589. We therefore grant the petition for review and remand to permit the agency to apply *Altamirano*.

PETITION FOR REVIEW GRANTED; REMANDED. Each party shall bear its own costs for this petition for review.